

HOUSE BILL 243
By Patton

AN ACT to amend Tennessee Code Annotated, Title 69, Chapter 10, relative to watercraft.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context clearly requires a different meaning:

- (1) "Agency" means the Tennessee wildlife resources agency;
- (2) "Dealer" means any person who engages wholly or in part in the business of buying, selling or exchanging new and unused watercraft, or used watercraft, or both, has a tax certificate from the Tennessee department of revenue, has a business license from the applicable local governmental entity, and who has an established place of business for the sale, trade and display of such watercraft;
- (3) "Department" means the department of safety;
- (4) "Established place of business" means a definite place of business with telephone service and a sign identifying that such business offers watercraft for sale or trade. Such sign shall be in a conspicuous place on the premises at or near the outside entrance to the business, unless a conflict with local ordinances exists;
- (5) "Lienholder" means a person holding a security interest;

(6) "Manufacturer" means any person engaged in the business of manufacturing new and unused watercraft for the purpose of sale or trade;

(7) "Owner" means a person, other than a lienholder, having an interest in or title to a watercraft. The term includes a person entitled to the use or possession of a watercraft, subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security or a vendor under a conditional sales contract;

(8) "Person" means an individual, partnership, firm, corporation, association, or other entity;

(9) "Personal watercraft" means watercraft as defined in § 69-10-501;

(10) "Security interest" means an interest which is reserved or created by an agreement and which secures payment or performance of an obligation and is valid against third parties generally; and

(11) "Watercraft" means all watercraft on the waters of Tennessee that are subject to registration and are over sixteen feet (16') in length and are not principally used for fishing.

SECTION 2.

(a) Every owner of a watercraft shall make application for a certificate of title for such watercraft to the county clerk of the county of residence of the owner or the county where the watercraft was purchased. If the owner of a watercraft is not a resident of this state application for a certificate of title shall be made to the county clerk of the county where the watercraft is principally used. An owner of a watercraft upon the effective date of this act shall be required to make an application for a certificate of title for such watercraft upon renewal of registration for the watercraft. Except as provided in Section 3 of this act, no owner of a watercraft shall be required to make an application for a

certificate of title for such watercraft until such owner applies for renewal of registration for such watercraft.

(b) The agency shall not renew the registration of a watercraft required to be registered and numbered in this state unless an application for a certificate of title has been made by the owner. Any watercraft, which has been issued a current and valid marine document issued by the United States Coast Guard or any federal agency that is a successor thereto, shall not be required to make an application for title. Owners of such vessels shall be subject to the provisions of Sections 17, 18, and 19 of this act.

(c) A county clerk shall not issue a certificate of title for a watercraft to a dealer unless such dealer provides a taxpayer identification number from the Tennessee department of revenue and a business license issued by the applicable local governmental entity.

SECTION 3. Beginning November 1, 2001, no person shall sell or otherwise dispose of a watercraft without delivering to the purchaser or transferee a certificate of title with such assignment as is necessary to show title in the purchaser or transferee; nor shall any person purchase or otherwise acquire a watercraft without applying for a certificate of title for it in such person's name within fifteen (15) days of the receipt of such watercraft.

SECTION 4. (a) After the effective date of this act, no person receiving a watercraft from any other person shall acquire any right, title, claim or interest in or to such watercraft until such person has applied for a certificate of title to such watercraft or receives a manufacturer's or importer's certificate of origin for it; nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title, or manufacturer's or importer's certificate for such watercraft for a valuable consideration.

(b) No court shall recognize the right, title, claim or interest of any person in a watercraft sold, disposed of, or encumbered, unless evidenced by:

(1) A certificate of title, a manufacturer's statement of origin or importer's certificate; or

(2) Admission in the pleadings or by stipulation of the parties.

SECTION 5.

(a) Every owner of a watercraft subject to titling under this act shall make application to the county clerk of the county of residence of the owner or the county where the watercraft was purchased for issuance of a certificate of title for such watercraft. If the owner of a watercraft is not a resident of this state, application for a certificate of title shall be made to the county clerk of the county where the watercraft is principally used. Such application for title shall be upon the appropriate form prescribed and furnished by the department of safety and accompanied by a fee set by the department. Every application for a certificate of title shall contain:

(1) The name, residence and mailing address of the owner;

(2) A description of the watercraft including the manufacturer's name, make, model, year, color, length, hull material, propulsion type, Tennessee registration number, and the manufacturer's hull identification number as provided in Section 15;

(3) The date of purchase by the applicant, the name and address of the person from whom the watercraft was acquired, and the names and addresses of any persons having any security interest in the watercraft in the order of their priority; and

(4) Such further information as may reasonably be required by the department to enable it to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the watercraft.

(b) Every dealer selling or exchanging a watercraft subject to titling under this act shall, before delivering such watercraft to a purchaser, make application to the

county clerk of the county of residence of the dealer or the county where the watercraft was purchased for a new title in the name of the purchaser. Such application shall contain the name and address of any lienholder holding a security interest created or reserved at the time of sale, and the date of the lienholder's agreement. The application must be signed by the dealer as well as by the owner, and the dealer shall, within twenty (20) business days, mail or deliver the application to the department. Dealers shall maintain records of such transactions for not less than three (3) years from the date of such transactions. Records of such transactions shall be available for inspection by the state of Tennessee.

(c)

(1) A security interest is perfected by delivery to the county clerk of the existing certificate of title, if any, and an application for a certificate of title containing the name and address of the holder of a security interest and a fee of eight dollars (\$8.00).

(2) The security interest is perfected as of the time of its creation if the delivery is completed within twenty (20) days thereafter, otherwise as of the date of the delivery to the county clerk.

(3) When the security interest is perfected as provided for in this subsection, it shall constitute notice to the world of the security interest or lien of the holder.

(d) If a dealer buys or acquires a used watercraft for the purpose of resale, and such watercraft is already covered by a certificate of title which is surrendered to the dealer by the owner or the lienholder at the time of delivery of the watercraft, the dealer need not send the certificate to the department at such time. Upon transferring the watercraft to another person other than by creation of a security interest, the owner shall within fifteen (15) business days execute the assignment and warranty of title by a

dealer, showing the names and addresses of the transferee and of any lienholder and the date of the lienholder's security agreement, in the spaces provided therefor on the certificate or as the department prescribes, and mail or deliver the certificate to the department with the transferee's application for a new certificate.

(e) In the event an application for certificate of title is made for a watercraft last previously registered in another state or a country other than the United States, the application shall contain or be accompanied by:

(1) A certificate of title issued by such other state or country other than the United States;

(2) Any other information or documents the department reasonably requires to establish the ownership of the watercraft and the existence or non-existence of security interests in it; or

(3) In the event the state or country other than the United States in which the watercraft was last previously registered does not issue certificates of title, a proper bill of sale or sworn statement of ownership, or any evidence of ownership as may be required by the law of the state or country other than the United States from which the watercraft was brought, plus any other information or documents the department reasonably requires to establish the ownership of the watercraft and the existence or non-existence of security interests in it.

(f) The county clerk of the county wherein a watercraft is to be registered shall act as the agent of the department in receiving the application for certificate of title pursuant to the provisions of this section. By receiving such application, the transfer of title and any liens noted thereon shall be deemed perfected, subject only to action of the department in declining, for good cause shown, to issue such title or to note such lien thereon.

SECTION 6.

(a) The county clerk shall transmit to the department each application for certificate of title that is received with the appropriate fee and complies in all other respects with this act. When satisfied that the application is genuine and regular, that the applicant is the owner of the watercraft, and that there are no security interests in the watercraft not disclosed in the application, the department shall issue a certificate of title to the watercraft.

(b) The department shall maintain a record of all certificates of title issued by it:

(1) Under a distinctive title number assigned to a watercraft;

(2) Under the identification number awarded to a watercraft in accordance with the registration and numbering act of the state in which it is registered;

(3) Alphabetically, under the name of the owner; and

(4) In the discretion of the department, in any other method it determines to be appropriate.

(c) All records of the department relating to the titling of watercraft shall be public records open to public inspection during regular office hours.

(d) If the department is not satisfied that the applicant for a certificate of title to a watercraft is the bona fide owner of such watercraft and that all security interests in such watercraft are disclosed in the application, the department shall withhold the issuance of a certificate of title until the applicant reasonably satisfies the department that the applicant is the owner of the watercraft and that there are no undisclosed security interests in it.

SECTION 7.

(a) Each certificate of title issued by the department shall contain:

(1) The date issued;

(2) The name and resident address of the owner;

(3) The names and addresses of any lienholders in the order of priority as shown on the application; unless the application is based on a certificate of title, then as shown on the certificate;

(4) The title number assigned to the watercraft;

(5) A description of the watercraft including the manufacturer's name, make, model, year, color, length, hull material, propulsion type, Tennessee registration number, and the manufacturer's hull identification number;

(6) Spaces for assignment of title by the owner or by the dealer and for warranting that the signer is the owner and that there are no mortgages, liens or encumbrances on the watercraft except as are noted on the certificate of title. Spaces shall also be provided on the certificate for application for title by a new owner subject to the security interests of any lienholders as are named and for the assignment or release of the security interest of a lienholder; and

(7) Any other information the department prescribes.

(b) A certificate of title issued by the department is prima facie evidence of the facts appearing on it.

SECTION 8. The original certificate of title shall be mailed to the first lienholder named in it or, if none, to the owner named in the certificate.

SECTION 9.

(a) No dealer shall purchase or acquire a new watercraft without obtaining from the seller a manufacturer's or importer's certificate of origin.

(b) No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a watercraft to a dealer for purposes of display and resale, without delivering to such dealer a manufacturer's or importer's certificate of origin.

(c) The manufacturer's or importer's certificate of origin shall contain:

(1) A description of the watercraft, including its trade name, if any, manufacturer's name, year, series or model, hull material, propulsion type, and manufacturer's hull identification number;

(2) Certification of date of transfer of watercraft and name and address of transferee;

(3) Certification that this was a transfer of watercraft in ordinary trade and commerce;

(4) Signature and address of a representative of the transferor; and

(5) On the manufacturer's or importer's certificate there shall appear an assignment form, including the name and address of the transferee, a certification that the watercraft is new, and a warranty that the title at the time of delivery is subject only to such liens as are set forth in the assignment.

SECTION 10.

(a) The owner, at the time of delivery of a watercraft, shall execute the assignment and warranty of title to the transferee in the space provided on the certificate of title.

(b) A transferee or purchaser, whether by operation of law or otherwise, of a watercraft shall obtain a new certificate of title by application to the department through the county clerk accompanied by the required fee and upon the form or forms prescribed and furnished by the department. The application for certificate of title shall be filed within fifteen (15) business days after the delivery of the watercraft.

(c) The certificate of title shall be delivered to the owner in the event no security interest appears thereon. Otherwise the certificate of title shall be delivered to the person holding the first security interest upon the watercraft as shown in the certificate and shall be retained by the holder of the first security interest until the security interest shall be discharged, at which time a notation shall be made on the certificate of title,

setting forth the fact that the security interest has been discharged, which shall be signed by the lienholder. The lienholder shall then deliver the certificate of title to the owner, unless the certificate of title shall show on its face one (1) or more security interests still outstanding, in which event the certificate of title shall be delivered to the next prior lienholder, either in person or by registered mail, and the lienholder shall within seventy-two (72) hours notify by mail the department of the discharge of such security interest.

(d) In the event any security interest which is subordinate to any other outstanding security interest is discharged or released, the holder of the subordinate security interest shall immediately procure the certificate of title from the lienholder in whose possession it is being held for the sole purpose of discharging the security interest as provided by subsection (c), and thereupon shall return the certificate of title to the person from whom it was obtained, notifying the department of the discharge of such security interest, or, in the alternative, the subordinate lienholder may immediately forward to the department a release setting forth the fact that the security interest has been discharged, which shall be signed by the lienholder, and the department shall note the release of security interest upon the certificate of title when the certificate of title is next in the physical possession of the department.

SECTION 11.

(a) If the ownership of a titled watercraft is terminated in accordance with the terms of a security agreement by a lienholder named in the certificate of title, the lienholder shall promptly mail or deliver to the county clerk the last certificate of title, an application for a new title accompanied by the required fee and an affidavit by the lienholder or an authorized representative, setting forth the facts entitling the lienholder to possession and ownership of the watercraft, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is

founded. If the lienholder cannot produce such proof of ownership, the lienholder may submit to the department such evidence available with the application, and the department may, if it finds the evidence to be satisfactory proof of ownership, issue a new certificate of title.

(b) If a lienholder succeeds by operation of law to the interest of a watercraft and holds such watercraft for resale, the lienholder need not secure a new certificate of title thereto but, upon transfer to another person, shall within fifteen (15) days mail or deliver to the transferee or to the department the certificate, affidavit and such other documents as the department may require.

SECTION 12.

(a) All liens, mortgages and encumbrances noted upon a certificate of title shall take priority according to the order of time in which they are noted thereon by the department. All such liens, mortgages and encumbrances shall be valid against the creditors of the owner of a watercraft, and against subsequent purchasers of any such watercraft, or against holders of subsequent liens, mortgages, or encumbrances upon such watercraft.

(b) When a lien is discharged, the lienholder shall note that fact on the certificate of title over the lienholder's signature and shall deliver such certificate of title to the owner. Before delivering such certificate to the owner, the lienholder shall notify the department of the discharge of lien in a manner prescribed by the department. The lienholder shall deliver the certificate of title to the owner within seventy-two (72) hours of such discharge.

SECTION 13.

(a) If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is not a lienholder, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, may obtain a

replacement title by applying to the department or county clerk, furnishing the prescribed fee and such information concerning the original certificate and the circumstances of its loss, mutilation or destruction as required by the department.

(b) In the event a lost or stolen original certificate of title for which a replacement title was issued is recovered, the replacement title shall be surrendered for cancellation as required by the department.

SECTION 14. When a watercraft with a certificate of title is scrapped, dismantled, destroyed, or is changed in such manner that it loses its character as a watercraft, or is changed in such manner that it is not the watercraft described in the certificate of title, whoever is named as owner in the last certificate of title shall within seventy-two (72) hours cause the certificate to be mailed or delivered to the department. The department shall, with the consent of any lienholders noted on the certificate, cancel the certificate.

SECTION 15.

(a) If a watercraft contains a permanent identification number placed thereon by the manufacturer, the manufacturer's hull identification number shall be used as the builder's hull number. If there is no manufacturer's hull identification number, or if the manufacturer's hull identification number has been removed or obliterated, or if the watercraft is homemade, the department may, upon a prescribed application, assign a permanent hull identification number which shall be used as the builder's hull number for such watercraft, and this assigned number shall be permanently affixed to or imprinted on the watercraft by an officer of the Tennessee wildlife resources agency.

(b) No newly manufactured watercraft may be sold or offered for sale by any person in this state after the effective date of this act unless such watercraft has a hull identification number regardless of whether assigned by the manufacturer or by the department.

(c) No watercraft may be registered or titled in this state after the effective date of this act unless such watercraft has a hull identification number assigned by the manufacturer or by the department.

(d) Hull identification numbers shall conform to the format and locations prescribed by the United States Coast Guard and all applicable federal laws.

(e) No person, firm, association or corporation shall destroy, remove, alter, cover or deface the manufacturer's hull identification number, or plate bearing such number, or any such number assigned by the department, on any watercraft.

SECTION 16.

(a) Every law enforcement officer of Tennessee having knowledge of a stolen watercraft shall immediately furnish the department with full information concerning such theft.

(b) The department, whenever it receives a report of the theft of a watercraft, shall make a distinctive record thereof, including the make of the stolen watercraft and its manufacturer's or assigned hull identification number, and shall file the same in the numerical order of the manufacturer's or assigned hull identification number with the index records of the watercraft of such make. The department shall prepare a report listing watercraft stolen and recovered as disclosed by the reports submitted to it, to be distributed as it deems advisable.

(c) In the event of the recovery of a stolen watercraft, the owner or recovering entity shall immediately notify the department, which shall remove the record of the theft from its files.

SECTION 17. (a) The following are offenses relating to titling:

(1) The operation or mooring in this state of a watercraft for which a certificate of title is required, without having such certificate of title.

(2) The operation or mooring in this state of a watercraft for which a certificate of title is required, and such certificate of title has been canceled.

(3) The selling, transferring or otherwise disposing of a watercraft without delivering to the purchaser or transferee a certificate of title, or a manufacturer's or importer's certificate, assigned to such purchaser or transferee as required by this act.

(4) The failure to surrender to the department any certificate of title upon cancellation of the same by the department for any valid reason set forth in this act or regulations adopted pursuant thereto.

(b) The offenses in subsection (a) are punishable as a Class C misdemeanor.

SECTION 18. (a) The following are offenses:

(1) Alteration or falsification of an assignment of a certificate of title that has been canceled; or

(2) Failure to surrender to the department any certificate of title upon cancellation of the same by the department for any valid reason set forth in this act or regulations adopted pursuant thereto.

(b) The offenses in subsection (a) are punishable as a Class B misdemeanor.

SECTION 19. The following offenses relating to titling are a Class E felony:

(1) Altering, forgery or counterfeiting any certificate of title or manufacturer's or importer's certificate to a watercraft;

(2) Altering or falsifying an assignment of a certificate of title, or an assignment or cancellation of a security interest in a certificate of title to a watercraft;

(3) Holding or using a certificate of title to a watercraft or holding or using any assignment or cancellation of a security interest on a certificate of title to a watercraft knowing it to have been altered, forged, counterfeited or falsified;

(4) Using a false or fictitious name or address, or making any material false statement, or concealing any material fact, in an application for a certificate of title, certificate of number, or in a bill of sale or sworn statement of ownership;

(5) Possessing, buying, receiving, selling or offering for sale, or otherwise disposing of a watercraft known to have been stolen; and procuring or attempting to procure a certificate of title to a watercraft, or passing or attempting to pass a certificate of title or any assignment thereof to a watercraft knowing or having reason to believe that such watercraft has been stolen;

(6) Possessing, buying, receiving, selling or offering for sale, or otherwise disposing of in this state a watercraft on which the manufacturer's or assigned serial number or hull identification number has been destroyed, removed, covered, altered, or defaced, knowing of such destruction, removal, covering, alteration, or defacement of such manufacturer's or assigned serial number or hull identification number; or

(7) Destroying, removing, covering, altering or defacing the manufacturer's or assigned hull identification number on any watercraft for the purpose of selling or otherwise disposing of such watercraft.

SECTION 20.

(a) The department shall have the authority to suspend or revoke a certificate of title to a watercraft, upon reasonable notice and hearing, when authorized by any other provision of law and if:

- (1) The certificate of title was fraudulently procured or erroneously issued; or
- (2) The watercraft has been scrapped, dismantled or destroyed.

(b) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

(c) When the department suspends or revokes a certificate of title, the owner or person in possession of it shall, upon receiving notice of the suspension or revocation, mail or deliver the certificate to the department.

(d) The department may seize and impound any certificate of title that has been suspended and revoked pursuant to the provisions of subsection (a).

SECTION 21. The following fees are due to the division of titling and registration in the department of safety:

(1) For issuing a certificate of title there shall be collected the sum of three dollars and fifty cents (\$3.50);

(2) For noting new liens or encumbrances not originally entered on a title and for transferring liens or encumbrances from one (1) lienor to the lienor's assignee upon a certificate of title when the transaction does not involve a change of ownership and where the certificate of title is forwarded to the division along with the application, the sum of three dollars and fifty cents (\$3.50);

(3) For issuing a duplicate certificate of title to replace a lost or destroyed certificate, the sum of three dollars and fifty cents (\$3.50); and

(4) For issuing a title with a new and distinguishing number for a watercraft where the manufacturer's hull identification number has been removed, destroyed or obliterated, the sum of three dollars and fifty cents (\$3.50).

SECTION 22.

(a) Whenever any application to the department or any county clerk is accompanied by any fee as required by law, and the application is refused or rejected, the fee shall be returned to the applicant.

(b) Whenever the department, or any county clerk of the state, through error, collects any fee not required to be paid hereunder, the same shall be refunded to the

person paying the same upon application thereof made within six (6) months after the date of such payment.

(c) Whenever the department shall decline to issue a certificate of title to any purchaser of a watercraft required to be registered, the applicant may, at any time within five (5) days from receipt of formal notice that the application for a certificate of title has been rejected, surrender the application for a certificate of title issued for the watercraft to the county clerk from whom it was purchased and be thereby entitled to an immediate refund of all the fees paid by such applicant for the titling of the watercraft.

SECTION 23.

(a) All fees collected by the department by the provisions of this act shall be for the benefit of the state and the same when so collected shall be deposited by the commissioner with the state treasurer and shall become a part of the general fund of the state.

(b) All fees required to be paid to the clerks of the various counties of the state shall, unless otherwise specifically provided, be retained by the clerk and handled in the same manner as all other fees collected by the clerk for such clerk's benefit.

SECTION 24. The county clerks shall, upon the performance of such duties as the registrar may prescribe governing the titling of watercraft and upon complying with the requirements of this act, be entitled to the following fees from applicants for the following services:

(1) For receiving and forwarding to the department each application for a certificate of title, including all acknowledgments of signatures thereunder, the sum of four dollars and fifty cents (\$4.50); and

(2) For issuing a duplicate certificate of title to replace a lost or destroyed certificate, the sum of three dollars (\$3.00).

SECTION 25. No fee, charge, or other cost shall be charged or assessed against any person who acquires title to a watercraft as a result of the death of the spouse of such person, if an application to transfer ownership and registration is made within one (1) year from the date of the spouse's death.

SECTION 26. Notwithstanding any provision of this act to the contrary, if other evidence satisfactory to the clerk is not available, a sworn affidavit by an applicant accompanied by evidence of registration of the watercraft with the Tennessee wildlife resources agency shall be sufficient for the purpose of obtaining a certificate of title for a watercraft acquired prior to the effective date of this act.

SECTION 27. The provisions of this act shall only apply to watercraft that are over sixteen feet (16') in length and that are not used principally for fishing.

SECTION 28. The commissioner of safety is authorized to promulgate, pursuant to Tennessee Code Annotated, Title 4, Chapter 5, all rules and regulations necessary for the carrying out of the provisions of this act. In addition, the commissioner of safety is authorized to promulgate rules and regulations pursuant to title 4, chapter 5, relative to contractual agreements with county clerks to allow county clerks to issue titles to watercraft.

SECTION 29. Tennessee Code Annotated, Title 69, Chapter 10, is amended by adding Sections 1 through 28 of this act as a new part thereto.

SECTION 30. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 30. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2002, the public welfare requiring it.

